

AMENDED IN SENATE APRIL 20, 2004

SENATE BILL

No. 1822

Introduced by Senator Figueroa

February 20, 2004

An act to add ~~Section 1798.87 to~~ *Title 1.81.15 (commencing with Section 1798.88) to Part 4 of Division 3 of the Civil Code*, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1822, as amended, Figueroa. Privacy: ~~social security numbers; sales~~ *online communications.*

Existing law protects the privacy of personal information, including customer records and social security numbers. Existing law prohibits a person or entity located in California from initiating or advertising in unsolicited commercial e-mail advertisements, as defined, and prohibits a person or entity not located in California from initiating or advertising in unsolicited commercial e-mail advertisements sent to a California e-mail address.

This bill would prohibit a provider of e-mail or instant messaging services, as defined, that serves California customers, from reviewing or evaluating the content of a customer's e-mail or instant messages, except as specified. The bill would permit a provider of e-mail or instant messaging services to review and evaluate the content of a customer's outgoing e-mail or instant messages with the customer's consent, and would permit a provider to review and evaluate the content of incoming e-mail or instant messages only from another subscriber to the same service and only when that subscriber has consented to the procedure.

~~Existing law prohibits a person or entity, except as specified, from publicly posting or displaying an individual's social security number,~~

and from printing that social security number on a card required for the individual to access products or services.

~~This bill would provide that a person or entity that sells a social security number is strictly liable to the person to whom the social security number applies for any and all damages that directly or indirectly result from the sale. The bill would except specified transactions from its provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1798.87 is added to the Civil Code, to~~
2 ~~SECTION 1. Title 1.81.15 (commencing with Section~~
3 ~~1798.88) is added to Part 4 of Division 3 of the Civil Code, to read:~~
4
5 ~~TITLE 1.81.15 PRIVACY OF ONLINE COMMUNICATIONS~~
6
7 ~~1798.88. For the purpose of this title:~~
8 ~~(a) “Electronic mail” or “e-mail” means an electronic~~
9 ~~message that is sent to an e-mail address and transmitted between~~
10 ~~two or more telecommunications devices, computers, or electronic~~
11 ~~devices capable of receiving electronic messages, whether or not~~
12 ~~the message is converted to hard copy format after receipt or is~~
13 ~~viewed upon transmission or stored for later retrieval. “Electronic~~
14 ~~mail” or “e-mail” includes electronic messages that are~~
15 ~~transmitted through a local, regional, or global computer network.~~
16 ~~(b) “Instant messaging service” means a service that alerts a~~
17 ~~person when another person is online and allows them to~~
18 ~~communicate with each other in current time in private, online~~
19 ~~areas.~~
20 ~~(c) “Provider of electronic mail or instant messaging service”~~
21 ~~means any person, including an Internet service provider, that is~~
22 ~~an intermediary in sending or receiving electronic mail or instant~~
23 ~~messages or that provides to users of the electronic mail or instant~~
24 ~~messaging service the ability to send or receive electronic mail or~~
25 ~~instant messages.~~
26 ~~(d) “Spam” means an unsolicited commercial e-mail~~
27 ~~advertisement sent to a recipient who meets both of the following~~
28 ~~criteria:~~

1 *(1) The recipient has not provided direct consent to receive*
2 *advertisements from the advertiser.*

3 *(2) The recipient does not have a preexisting or current*
4 *business relationship with the advertiser promoting the lease, sale,*
5 *rental, gift offer, or other disposition of any property, goods,*
6 *services, or extension of credit.*

7 1798.88.1. (a) *(1) Except as provided in paragraph (2), a*
8 *provider of e-mail or instant messaging services to California*
9 *customers may not review, examine, or otherwise evaluate the*
10 *content of a customer's outgoing or incoming e-mail or instant*
11 *messages, unless that provider has a court order or is otherwise*
12 *required by law to do so.*

13 *(2) A provider of e-mail or instant messaging services to*
14 *California customers may review, examine, or otherwise evaluate*
15 *the content of a customer's e-mail or instant messages if the*
16 *provider has the consent of the customer, and reviews, examines or*
17 *otherwise evaluates only the customer's original outgoing e-mail*
18 *or instant messages with the consent of the customer. The provider*
19 *may review, examine, or otherwise evaluate the content of*
20 *incoming e-mail or instant messages only from another subscriber*
21 *to the same service and only when that subscriber has consented*
22 *to the procedure.*

23 **(b)** *This section does not prevent a provider of e-mail or instant*
24 *messaging services to California customers from filtering*
25 *unsolicited e-mail for removing spam or for managing computer*
26 *viruses or other malicious programs.*

27 *read:*

28 ~~1798.87. (a) Except as provided in subdivision (b), a person~~
29 ~~or entity that sells a social security number is strictly liable to the~~
30 ~~person to whom the social security number applies for any and all~~
31 ~~damages that directly or indirectly result from the sale.~~

32 ~~(b) This section does not apply to the sale of a social security~~
33 ~~number that is part of a transaction that is regulated by the~~
34 ~~Consumer Credit Reporting Agencies Act (Title 1.6 (commencing~~
35 ~~with Section 1785.1)), the federal Fair Credit Reporting Act (15~~
36 ~~U.S.C. Sec. 1681 et seq.), or other state or federal law that restricts~~
37 ~~the dissemination of personal identifying information.~~